



Town of Jericho
Development Review Board

Town of Jericho
Development Review Board
Jericho Town Hall
Thursday, April 28, 2016

Minutes
Approved 5/12/16

Members Present: Barry King, Joe Flynn, Stephanie Hamilton, Bruce Jacobs, Jeff York
Members Absent: None
Guests: Michelle Patrick (Zoning Administrator), Clinton Calderwood, James Bullivant, Chris Marcus, Scott Burt, Don Foote, Will Veve, John Heselton, Tony Likhite, Patricia Nolin, Brian Swisher, Mike Chouinard, Jim Carroll, Mary Heselton

MEETING AGENDA

- A request by Clint Calderwood for site plan and conditional use approval of a 4,320 square foot warehouse structure at 95 Cilley Hill Road. This parcel is located in the Agriculture Zoning District.
- A request by Old Morgan Orchard LLC for sketch plan review of a three duplex PUD. This parcel is located at 20 Morgan Road in the Rural Residential Zoning District.
- Approve minutes from April 14, 2016.

Mr. King called the public meeting to order at 7:00 p.m. He read the warning. He asked the members to disclose any conflicts of interest or ex parte communication. There was none. Mr. King read the Interested Persons Law. The public was sworn in at 7:05 p.m.

1. A request by Clint Calderwood for site plan and conditional use approval of a 4,320 square foot warehouse structure at 95 Cilley Hill Road. This parcel is located in the Agriculture Zoning District.

Applicant's Presentation

Mr. Calderwood stated I am here with my business partner James Bullivant; we operate under the business Vermont Barn Finds. He said we bought this property 10 years ago from Jay Austin. He said we are requesting conditional use for a new storage barn and site plan review as well. Mr. Calderwood said currently this is the existing barn built in the 50's and it has an adaptive conditional use; it was used as storage when we bought the building and we are continuing to use it as such. He said this new building, the conditional use would be for warehousing. He stated it would be for personal use, as well as storage use; we are expanding our business.

Mr. Calderwood stated our barn has been full the last two years and we have been turning away customers, so we are looking to expand; as well as we have a number of vehicles outside that we would like to put inside and get within compliance of the registered vehicle requirements in the Town of Jericho. He said this is a Google view, indicating the location of the existing barn, the proposed location on the side of Donner Lane. He said we are maintaining a setback of 35' from the property line on Donner Lane and ample setbacks from the remaining property lines. Mr. Calderwood said this is just a rendering of an existing barn, noting there is a fair amount of natural screening now and

we would make every effort not to disturb any of that. He said we would leave as many trees, shrubs, and bushes there as possible during the course of construction. He said this is what the proposed barn would look like with steep pitch overhangs, cupolas, roll up doors, and windows; this is the existing drawing and what we are indicating here in the bold is things that will be changing.

Mr. Calderwood stated we have an existing fence here and we would remove that section of fence, adding we would take out these various bushes. He said we met with the highway person and he recommended we take out these bushes on the corner to improve the line of sight when getting in and out of the building. He said this would be the proposed view; here we have the building, the existing drive coming into the existing building and we would have a proposed drive to the new building. Mr. Calderwood said we would have space for a few cars behind the fence here; the only time we are proposing using this parking from here on out would be basically in the spring and fall when we are moving cars in or out of the building. He said we would have a staging area where we would move the cars out, then people would come and take them away.

Mr. Calderwood stated we will have an underground electrical service here for the building. He said we would extend the fence and we would provide additional screening and we would fill in this natural gap in the trees with some shrubs. He said in 2014 we planted some fruit trees along this edge to try to improve the screening on that side. Mr. Calderwood said we would have an exterior light here on the front, above the door, with a motion sensor and it would comply with the Town requirements on lighting. He stated we would have no signage, we currently don't have any signage and we don't propose any. He said our lot coverage requirement in the Agriculture Zone is 30% and with this proposed building our lot coverage would be 15%.

Mr. Calderwood said we submitted some traffic information because there was a question on the hours and the amount of traffic; we outlined basically four weekends in the spring and six weekends in the fall when we would be moving cars in and out, approximately two to three days a week and up to eight cars a day. He said what we did is we calculated that every person comes with ride, so we included both vehicles in the calculation. He said we are currently at about 301 trips per year, under the current conditional permit we are allowed 1,300 trips per year and obviously we are not getting anywhere near that. Mr. Calderwood said with the new building we will be looking at 426 trips per year; we have compared that to a single home with two cars and two people working which calculates out to approximately 700 trips per year, so I think we are a fairly low traffic impact.

Mr. Calderwood said our business started in 2006, we have been providing storage for the general area for about nine years and we have some issues aesthetically with the old building. He said last fall we moved to improve that, we repaired the façade of the building and added some windows and a door, repaired all of the siding. He said we have future plans to repair the siding on the south side of the building which is starting to fall into disrepair; we will fix any broken windows. Mr. Calderwood stated there are more than the allowed number of cars out front and out of public view there are additional cars. He said our intent with this project is to either put everything inside that doesn't meet the requirements for registered vehicles or get rid of it; we want to be in compliance, we want to fix the old barn up to look nice and we want this new barn to look nice too. He said we want to compliment the neighborhood and make a departure from where we have been the last few years; we are moving in the right direction.

Mr. Bullivant said because it is seasonal storage; we have one customer that has regular storage that comes in and out a couple days a week, a business out of Underhill; the seasonal storage is that

people come to drop their cars off for the winter, we put them in and come spring-time they come to pick them up. He stated there isn't a lot of activity other than that, besides Clint or myself going down there as needed. He said those are our basic hours of operation. Mr. Bullivant added we met with the Fire Department and we submitted the letter where they recommended we install a fire alarm and a heat sensor in the building. He said in this proposal we will do that as well.

Mr. Bullivant said we covered previously that we can make any accommodations for parking. He said we are not really a high volume business. He said there are not any employees on the property; we can put parking for seven or eight places to meet the requirement, but I don't know if they are necessary. Mr. Bullivant said the same thing with the handicapped parking, we can add one with the signage, but currently we don't have anyone parking and staying; they drop the cars off and pick them up, that is about it.

Board Questions

Mr. York asked what the proposed access is to the 60' by 40' barn. Mr. Bullivant responded that currently we have an unofficial access; we drive over our grass and our existing dirt. He said we used to be doing it down the left-hand side and this fencing area used to be on this side also. He stated it was kind of only a partial fence; we removed that in an attempt to make this area untouched going forward and will go right down the center at this point. Mr. York asked what they will store in that barn. Mr. Bullivant said right now we have a mix of personal and storage stuff in there, same as we do in here. He said our original intent was that this was going to be a personal barn for Clint and I because we have our own projects, cars, and stuff that we do. He said we have probably a fifth of this building today that has our personal stuff in it, so we will move it into that or move it back; if we move our stuff back there it will be less traffic back there.

Mr. Flynn asked, in regards to a couple of things on the site plan, what is the intention of the grading of the new structure. He said we don't see any contours, proposed grading, how the water is going to change, if it is going to change, and the new structure of the road, to make sure it is not impacting the neighbors. He said regarding the limits of gravel, while you are definitely under your coverage, you just mentioned it is mostly grass out there, we really should be seeing the limits of gravel, currently and what is proposed and any changes in that; more of a site plan than what we have in front of us. Mr. Flynn said also addressing during construction an erosion control plan; probably going to definitely be low risk, but those guidelines need to be looked at and followed. He stated I am somewhat familiar with the site, it is flat out there. He said usually flat sites are the dangerous sites because in construction, we tend to push water to where we don't want it. Mr. Flynn said with new construction you can't worsen any current situation. He reiterated we are not seeing any contours; so can you tell me the intention here.

Mr. Bullivant said the pitch roof on this here is to the left and to the right. He said you are right, it is very flat out there and we have run into issues with water coming off of Cilley Hill Road into the front area, noting Donner Lane runs into issues as well with water between the snow banks down this way. He stated our intention on this side of the barn is to deal with some of that. Mr. Bullivant said we have put a swale in from here to here; once you get below the topsoil it is fairly sandy and it usually drains really well, but it is just getting through that 18" of topsoil and farm land that is there. He said that proved this year to have a good impact this year on water this year for us, so we would likewise do the same thing on each side of the bank. He said the road would be raised several inches and we would swale both on the inside and on each side of the barn without drastically disturbing the site.

Mr. Bullivant said off of the roof eaves we would put the pea gravel or whatever is appropriate to catch the drippage. He said we could also put in gutters if needed and drain it to a well. He said our plan is certainly to address the water on the premises because we do know that it is fairly flat and water will sit unless you give it a place to go. Mr. Bullivant said swales in these areas, in the back, down the backside, and around each of the buildings; this all would be raised up about 3" to 4". He said it would be taken down first to get the topsoil off, then put some Mirafi down, which is road matting, then base mix, then plant mix combination, so this top would be plant mix, then rolled so you have a decent driveway as well.

Mr. Flynn clarified currently the situation on the site is that there is some ponding, but it stays on the site, it is not running onto Donner Lane and causing issues with the Town road. Mr. Bullivant responded not that I know of, noting that Donner Lane is a private road. He said two years ago, during the winter, we had a bunch of water, rain in the middle of winter when things were frozen up and it had nowhere to go. He stated I know Donner Lane flooded, Cilley Hill Road was flooded; he indicated the locations, saying it was basically water caught between two snowbanks. Mr. Bullivant said there is no grade to Donner Lane currently, it is flat and there is no current swales on either side or any type of culverting in the whole area at this point. He said there is a pond that sits out in this area where I think everything ends up eventually. He said our property comes to about here and then Jack's property goes right to the pond and Scott's property goes up to the pond as well, through here.

Mr. Bullivant said this area here is definitely an area that gets water and standing water, and this road is flat, so water does go through that area. Mr. Calderwood stated our lot sits lower than Donner Lane, so if anything water would come onto our lot and drain in our lot. Mr. Bullivant discussed the winter flooding event that happened recently. He said that is the low point in the lot, so it is advantageous for us to make sure the drainage is moving away from the buildings as much as possible and getting to good drains. Mr. Flynn asked to go back to the site plan; existing limits of gravel, right now you have just one drive going into the 170' by 40', you are proposing a new one. He asked if you are proposing a parking lot, or is that already gravel. Mr. Bullivant responded there is actually no gravel on the site currently; there is a small pad in front of this building with some drainage off to the left-hand side, but this is kind of an informal driveway. He said it has always kind of been that way, which is why we had the Highway Department come out to give us an official curb cut and application, saying they did that and cleared that. He said we want to improve this as well, while we do this. Mr. Bullivant said if this area, if we feel it is necessary to make that gravel, we could; we certainly want to make sure it is all impervious surface, so water doesn't drain down through.

Mr. Flynn asked about the setbacks, the 35'. Ms. Patrick clarified on the side from Donner Lane. Mr. Flynn said you show the building right on the setback, typically you want to be a little plus from that. He asked how you are going to establish where that is and not be within the setback. Mr. Bullivant stated we could either have it surveyed and find the official line, which would probably be the right thing to do so we don't get too close. Mr. Flynn said the plan you have is pretty well detailed, it is not a surveyed plat, but it is detailed. He asked if there was one done recently. Mr. Bullivant said a survey, I don't think so. Mr. Calderwood said this information was from the survey that was done when this was originally accepted. Mr. Flynn said that is what I mean, there was an original plat on this. Mr. Calderwood agreed, saying this was divided up from the Griswold property 25 years ago that was divided up into these four lots and then this lot was part of Scott Burke's lot, saying the lady subdivided it and sold those two.

Mr. Flynn clarified that the bearing and distances you are using are based on a filed survey, asking if we have it. Ms. Patrick said she hasn't seen the survey. Mr. Bullivant stated we could have it re-surveyed if necessary. Mr. King asked if there was a note on the site plan. Mr. Bullivant said there is one on file that has to do with the previous owner applied for a house lot on this particular lot, so I know there is a survey. Mr. King said we know there is a subdivision plat because there are lot lines. He said the question is whether this drawing that you are using to generate your site plan, the position of the proposed barn, etc.; is it from the plat or not. Mr. Bullivant said it is from the Town. Mr. Calderwood added that he took it off of the file. Mr. Flynn asked if it was GIS (geographic information system) information. Ms. Patrick said if it was from the zoning file it was most likely from a previous applicant. Mr. Flynn said from the plat, if the road isn't in the center of the right of way and you pole off the center of the road, you could end up building inside the setback, so beware of that. Mr. Bullivant agreed, saying we did understand that the road was shifted toward our property; we can have it surveyed prior to construction or any type of work being done.

Ms. Hamilton asked about the zoning violations, whether prior to what you are proposing now, were there any type of actions taken to address the violation. Mr. Bullivant stated there was a 2012 letter between ourselves and John Zwick, Zoning Administrator. He said in 2012 he sent us a letter regarding too many unregistered vehicles in front of the building, noting if you look in the file they gave a list of cars that were creating the violation. He said at that particular time we were re-pouring part of the front of the barn, so we had many of the vehicles out of the barn, in the front yard. Mr. Bullivant said we worked with John to say that once we got done with that we would put the automobiles back in the barn to satisfy the violation and we did do that. He said since then, like today there is more than the limited three that are out there today, but they are different vehicles. He said the 2012 violation did get addressed and I think on August 9, 2012 he basically said we needed to remove the vehicles from view or provide registrations, noting there were a few that were registered.

Mr. Bullivant said we are still over the three that are outside, so we put them back into the facility at the time. He said that got resolved at that time, but we are in violation today with the stuff we have out front. He stated this past fall we did add to the fence, the fence that you saw in this area, to try to contain those vehicles and put them inside the fence and out of view, but we have three or four more that are still out front that we need to move back there. Ms. Hamilton asked if a new violation was issued. Ms. Patrick said no, saying based on the list of cars John left in the file it looks like a lot of them are still outside. She stated you may well have brought them in, then put them back outside at some point; I am not sure because this was four years ago. She said there is no cure in the file; usually once a violation is remedied, the Zoning Administrator will send a letter saying you have cured the violation.

Ms. Patrick said based on some recent photos and from driving by, it looks like those are still the cars that are out there. Mr. Bullivant asked if she had those photos. Ms. Patrick said she does, discussing the vehicles involved. Mr. Bullivant stated our neighbors brought a picture from 3/6, just the other day; just to clarify that the current vehicles that are out there are in this picture here. He discussed which vehicles are outside currently. He said there is a document from one of the neighbors or a lawyer saying that we or the Town didn't address the issue, but we had already addressed the issue working with John. Mr. Bullivant stated we are not arguing that we are not in compliance today, but our goal is to put all of that stuff inside.

Ms. Hamilton asked if when they applied for the permit for the barn in 2014 whether any of the violations were brought up or thought of as cured at that time. Mr. Bullivant responded when we applied for that John basically gave us the permit and didn't bring up any issues that I remember; it didn't even go to the DRB. Mr. Flynn asked Ms. Patrick whether the list of the current adjacent property owners on the DRB application is complete. Ms. Patrick said it should be; checking the service list in the file she said it is just the four of them.

Ms. Patrick said looking at the photo that you submitted, in terms of outdoor display, can you testify to what those items are. Mr. Bullivant said the barrels are filled with vegetable oils, saying the blue Bug that is there is a veggie car; the flatbed is a flatbed that is proposed to go on that white camper; the bus that is in the front is a customer car that is coming for pick up; the trailers are registered; the truck that is out front is a customer car as well; there are two pallets of bricks which are mine; the boat is Clint's; and there are two other customer cars in picture one. He stated picture two is just another angle, saying there was a tractor there that is both of ours. He said picture three, which is from the north side, dated 4/13/16 was taken from on our property somehow, it is inside that car chorale, but none of this is in view for the public.

Mr. Bullivant said somebody took that picture from on our property without our consent. He said the picture of the front of the building shows the barrels of vegetable oil and the last picture, of the plow truck, is from the back end of the property, from on our property, not from public view, and it shows the back of the property and our on-site plow truck. Ms. Patrick clarified that these barrels, there are a few of them, are not full of hazardous waste. Mr. Bullivant said no.

Mr. King asked how many unregistered vehicles are being presently stored outdoors at your location. Mr. Bullivant responded, not including trailers or boats, there are fourteen. Mr. King clarified that boats count. Mr. Bullivant said one boat and one tractor, saying there is one trailer but it is registered as is the boat. Mr. King clarified there are fourteen unregistered. Mr. Bullivant agreed, saying that includes the ones inside the fenced in area that is out of public view.

Ms. Patrick asked if they happen to know that all of those vehicles are not leaking and that there is not fluid coming out. Mr. Bullivant stated none of them are leaking that he knows of, noting that some of them do not have engines. He said probably two-thirds of them are not owned by us, they are customer cars that we are being paid to hold, they are storage clients; the other third are either his or mine, project cars.

Public Comment

Mr. King explained the public comment process and swore in members of the public who arrived after the oath was administered at the beginning of the meeting. He noted we do have one piece of written public comment, a letter and photographs from Chris Marcus and Anita Liberty; Alicia and Tony Likhite; and John and Mary Lou Heselton; all residents on Donner Lane. He stated the written public comment is here and will be part of the deliberations.

Ms. Patrick stated she received written testimony from Kevin Costello basically supporting construction of the barn. She said she also received a letter from the Fire Department, noting as the applicant stated during the presentation they approved of the development conditioning it on the installation of a fire alarm system with heat detectors and mentioned they needed to contact the Vermont Division of Fire Safety to obtain a permit.

Mr. Marcus said I want to briefly talk about the written documentation I submitted and I have a couple of questions as well. He stated we have two primary concerns:

1. The existing facility is really being used as a storage junkyard; the pictures that are attached to the documentation clearly show that. This is not something new, this has been a growing issue. None of the neighbors have lodged a formal complaint that I am aware of. We thought that when that new structure was built that a lot of that would go into that new structure, but instead it is out and basically, from what we can tell, anything that pays goes inside and anything that doesn't goes outside. This problem has been growing since this property was purchased and it has been getting progressively worse; just from the count of outside vehicles that I see in these pictures, there are eighteen vehicles outside now and like I said that has just been growing over time. There are also barrels and it is really a junkyard. These guys have not been good neighbors and it has just gotten progressively worse.
2. We wanted a legal review done on this proposal. The second page in the written document we submitted, it was pretty clear in talking with our lawyer that this lot is not-conforming and therefore it is subject to non-conforming use Vermont case law. I am not a lawyer, so I am not going to pretend to be one, but the second page in this provides some backup on that. Our lawyer also asked and suggested that the Board request review of this from the Town's lawyer as well, giving this non-conforming use restriction.

Mr. Marcus said the last thing I want to talk a little bit about is drainage. He said the structure is located, as was mentioned, pretty much right on the edge of the property line, that is a big structure. He said that roof line is about 100' by 20' which would be draining directly onto the Donner Lane property line. Mr. Marcus said that section does not grade into that property, it grades toward Donner Lane, so you have got basically half of that structure draining into our property and into our road. He said clearly that is a secondary concern relative to the first two I have just brought up, but I did want to raise that as well. He said if that thing is sitting right on the property line, I used to be a registered professional Engineer in civil and I know your drainage cannot go onto somebody else's property, you have to retain that water.

Mr. Marcus said that is a concern as well, but that is a lower priority for me compared to the other two in the documentation. He said I would encourage you all to take a look at these pictures and go out to the site. He said I would have thought with the permitting process the site would have been cleaned up a little bit at least, but again there is a complete disregard for junk and vehicles on that site. He stated I think the fact that it wasn't cleaned up before going into this meeting reflects the way that property has been managed.

Ms. Heselton stated there is a storage facility here in Town, just down the road here, asking if we have rules and regulations for that business and how the exterior of their property looks and what's inside whether it is safe to have and water drainage into our wells and onto our properties. She said I am just wondering whatever laws we have in effect for that storage facility down there may also apply to the storage facility that is at the corner of our road.

Mr. Heselton said my biggest concern is the non-conforming use, Clint mentioned the 30% part of the proposed barn, but according to the agricultural zoning rules we have in Town here the lot size is two acres and it is supposed to be 10 acres, so where are we at here. He said the last building they built, we got a letter that was going to be a proposed building and that went up; now we have this proposed building and I just want to know whether the zoning rules are being enforced here.

Mr. Likhite said regarding access to the buildings, I am sure that most of the time the access is from Cilley Hill Road directly onto the property. He said several times in the past though, equipment, heavy equipment, has been driven onto Donner Lane, then across and onto the property doing some damage.

Mr. Burt stated I have read the report from the previous meeting in March on the project, and I hadn't realized so many cars were being stored inside the old chicken coop during winter. He said my concern, as the immediate neighbor, is if the old building were to catch on fire, it is great that there would be alarms, but somebody has to call the Fire Department and when they do respond, what are they going to do. He said I noticed in the previous report there was concern over the lack of fire hydrant anywhere in the vicinity; it is an older structure, it used to be part of my property and I don't know the status of the electrical inside of the building. Mr. Burt said I guess I would question whether the electrical is to a standard that is acceptable for a storage business. He said I know nothing about the storage business, but the only thing I observe is that within a mile of here there are three different storage facilities that are all steel structures and you don't see a 1950s wooden structure housing that many vehicles. He said my concern is that if it did catch on fire in the winter when there are 35 or 40 cars in the old building, what would happen.

Ms. Heselton stated that just made me think of the siding on the old building, I don't know what the siding is, but it gives me some concern that it might be asbestos and just hearing about the possibility of an electrical fire, which I had never thought of before, gave me quite a bit of concern.

Mr. King said we will get the questions answered, noting there are a large number of comments, which I don't need to repeat. He stated there was a question about the definition of this as a storage facility and as a storage facility are there rules. He responded the simple answer is yes, there are rules that apply and most of them are in the general standards. Mr. King said are there rules, yes; are they consistent, yes the rules for storage facilities that are the same; there are storage facilities in lots of different places around Town, it is one of the uses that is in the Table of Uses.

Ms. Patrick said the storage facilities generally get, if they came forward with a development proposal to build a storage facility they would be subject to the same standards, all of them. She said once built, and this is true for any kind of house or other structure, unless you are driving by and see a violation or something else, you are not going to know it was not built up to a certain standard and that can happen with anything. She said generally yes, they should all be up to the same standard and that is why we have regulations that are going to enforce outdoor display and the number of unregistered vehicles on display on a site and that is part of why we are here tonight.

Mr. King said there was another question about enforcement and I would like to note that the way that enforcement works is the Zoning Administrator works for the Selectboard and the Zoning Administrator, if they find a violation, report it to the landowner and they work to get it resolved, but they also report it to the Selectboard. He said the Selectboard can take action, if they choose to do that, so they work with the Zoning Administrator on enforcement actions. He said I know that is the general process. Mr. King stated there is presently a zoning violation open on this property. Ms. Patrick agreed. Mr. King asked if the Selectboard knows about the violation. Ms. Patrick said when John Zwick issued the violation it should have been sent to the Selectboard also, that is part of the process. She said it is the Selectboard's job to decide whether or not they want to take action on said violation.

Mr. King said there were a number of other comments, but no other questions. Ms. Patrick said there was a question about it being a non-conforming use. She said this lot is a pre-existing, small lot, so

when this was subdivided it is likely that the Agricultural Zoning District's lot size wasn't 10 acres; that is the only way it could have been an approved subdivision, unless it had been a Planned Unit Development, or at that point in time a Planned Residential Development, which this wasn't. She said at the time that lot was created, 2 acres was fine; over time, minimum lot size, as well as any other dimensional standard can change and eventually you will get lots that are out of compliance. Ms. Patrick said just because it is small, doesn't mean that they can't do anything with it; it is not a non-conforming use, it is a small lot in the Agricultural Zoning District.

Mr. King asked Ms. Patrick if she could tell us the history of this lot and the subdivision. Ms. Patrick said she doesn't know when this lot was subdivided, so she couldn't say for sure what the minimum lot size was when this happened. Mr. King said as far as the status of the lot, whether it is a grandfathered small lot, or whether it is a non-conforming lot is a difference. Ms. Patrick agreed. Mr. King said we would have to go back in the Land Records to see when it was subdivided and what the rules were. He stated that is the answer to the question about the definition of a non-conforming use versus a grandfathered lot. Ms. Patrick added they are different sections, so dimensional standards are all under Section 5 and non-conforming uses is Section 7.

Mr. Flynn said a non-conforming lot can be non-conforming due to use or due to dimensional standards. Ms. Patrick clarified it can be non-conforming due to the structure or the use. Mr. Flynn said it is non-conforming because they can't make the shape of that lot smaller in size; that would make it worse, that is not allowed. Ms. Patrick said even if someone had a non-conforming structure on a lot, they could enlarge it, but only up to a certain size. She said they could enlarge it up to 25% even if it was non-conforming; there are other stipulations for structures as well.

Mr. Calderwood said he would like to answer a few of these questions; one was about the old barn and the proposed fire system, that would be with a monitoring system and a monitoring system company such that if the heat sensor went off the company would get a call and they would call the Underhill-Jericho Fire Department; that would be 24 hours a day. He addressed the question about the electrical system in the barn, saying all of the original wiring has been disconnected and everything in there that we use has been upgraded. He stated the siding on the barn is asbestos; saying they had that tested a year or two ago and it is non-friable.

Mr. Flynn asked about access off of Donner Lane, whether that was a sporadic or a one-time thing. Mr. Calderwood responded that it did happen and that was the one time we heard from the neighbors and they told us not to pull off of Donner Lane. He said Jamie and I, and our customers, don't use that; on occasion we had some people who stopped in and pulled off onto the grass. He and Mr. Bullivant discussed the example. Mr. Flynn clarified the applicants are proposing trees and shrubs in that area to prohibit that in the future. Mr. Bullivant said we did show them and we could if we want to. He discussed the situation and how they addressed it with the customer.

Mr. York asked if there are any unregistered vehicles on the property now that will not be in the proposed barn. Mr. Bullivant said the intent is to put all of the vehicles back in the barn, saying the only one he would question is the boat due to the physical height of it. Mr. King said you testified earlier that the boat is registered. Mr. Bullivant said that is true, so no; any that we do not want will be scrapped. Mr. Flynn clarified all of the vehicles in the back will either be in the barn or will be scrapped. Mr. Calderwood agreed, saying regardless of the decision on this application we are going to get ourselves into compliance.

Ms. Patrick said in recognition of the statement in public comment, I will run the applicant's written testimony from his lawyer through the Town attorney to ensure we are acting correctly. Mr. King added that is pretty normal for us to do, as a DRB to use the Town attorney to get advice on these types of things, so it is not unusual. Mr. King closed the hearing.

**2. A request by Old Morgan Orchard LLC for sketch plan review of a three duplex PUD.
This parcel is located at 20 Morgan Road in the Rural Residential Zoning District.**

Applicant's Presentation

Mr. King explained how sketch plan review works. Mr. Veve introduced himself, saying he is representing the company Old Morgan Orchard LLC, and distributed some materials to the DRB members. Mr. King asked if it was material Ms. Patrick already had. Mr. Veve said it is not. Ms. Patrick said generally we ask that you provide everything in advance. Mr. Veve apologized, saying he thinks there was some confusion in the affordable housing language and energy efficiency. He said what we are trying to do here is to use an enlightened approach to enter into a workforce housing project. He explained a workforce housing project is defined as affordable and flexible in the real world, noting some examples.

Mr. Veve said many forces come together to prevent these members of society from having greater energy efficient and sustainable homes. He stated when you combine proximity, safety, and flexibility, they have virtually no choices in our Town of Jericho; for that matter, most of Vermont is lacking quality workforce housing stock in our opinion. He apologized for the confusion about workforce affordable and Jericho's definition for affordable that was included in the write up, saying he knows Michelle took a lot of time to do that write up prior to this meeting.

Mr. Veve said we are directly asking for our energy efficiency bonus, not affordable. He stated he would like to go through some of the points with this project that are unique to the project with DRB approval, noting the following:

1. We have Vermont Electric Co-op, Fairpoint, and Comcast are all available on site.
2. There are good sight distances to a fully permitted access point, compliant access and egress.
3. Superb soils on site for gravity septic with conventional design as permitted.
4. Great location for community solar when situational politics will allow.
5. Proximity to our local school, Mount Mansfield Union High School (MMUHS).
6. Champlain Water District hook up, no well heads, and opportunity for excellent fire safety for any of the structures that are on site.
7. Excellent hard wood and fruit tree species on site after all of the very dangerous poplars are removed.
8. Excellent drainage, slopes and topo combine with the excellent soils to require no off-site discharge, water would re-infiltrate into the soils.
9. The plan will be presented in the south to west orientation with good views and sunlight.
10. Good road frontage with fire hydrant for safety.
11. Nice neighbor with MMUHS, direct abutters to the back parking lot and back sports fields.
12. Great neighborhood, with privacy and proximity.

Mr. Veve said our choice between conventional and PUD (Planned Unit Development) is pretty simple; a PUD concept will essentially create an exclusive use area for the occupants, including their home and approximate area they control in a family-type model. He said our approximate target is, including the home footprint, about a ½ acre; common shared areas will be road drives, landscaping, amenities, septic, utilities, and buffer community uses and intended trail system for the residents and

the neighbors in general. He stated all of this within the 50% of the total lot area. Mr. Veve said the PUD common area will be the whole boundary of the lot, with the exclusive areas deeded out. He said the individual exclusives will essentially be key holes and the open space plan. He said the HOA (Homeowners Association) will be a friendly legal vehicle that manages all of the necessary components to provide quality, efficient common management to the shared areas and amenities with built in mediation versus litigation.

Mr. Veve stated the dwellers will have exclusive use to the dwelling and ½ acre area approximate to the dwelling; septic tank, water supply, safety matters, and security will all be located in this exclusive area. He said our final plan will show area for common play, trails, solar, landscaping, buffer landscaping areas, and the open area. He said directly for our request for energy efficiency and density bonuses, going through the regulations and the Town Plan, there are numerous energy rating systems available. Mr. Veve said the standard detail in the Jericho regulations and Town Plan specifically stated Energy Start at Homes Silver Rating; having discussed this definition with the following groups and agencies, we could not find such a standard, so we reviewed all of the standards, noting the various standards. He said we are asking the Board to accept as a standard to the bonus under the energy efficiency density, Efficiency Vermont's EV "Stretch Standard", saying information was provided in the packet regarding these standards.

Mr. King said the document you gave us says Efficiency Vermont Certified High Performance and base level. Mr. Veve stated it would be high performance. Mr. King clarified you are proposing that you are going to design to meet the Efficiency Vermont Certified High Performance and you are proposing that we interpret that as the density bonus. Mr. Veve agreed, discussing the rationale, saying we would request that this be the comparable standard. He said tonight's presentation is not intended to go through all of the exact details, but to gain the Board's understanding and acceptance of Efficiency Vermont's standards, or its equivalent, for the density bonus. He said I listed a bunch of other notes that speak to the affordable aspect following the guidelines for affordable housing, but after further analysis and speaking with all of our professionals, it really will not work and we believe energy efficiency is going to be a better product for the community then the affordable housing because of the uncertainties in how these regulations are written in Jericho, offering to discuss the details further.

Mr. King stated he doesn't feel that is necessary because you are going to apply for what you apply for and that is not up to us. Mr. Veve agreed, saying with our project here and workforce housing, trying to attract new, younger people to Jericho that I think really want to live here. He stated I personally would like to buy one of these homes, discussing the benefits of the project further. He said it is what the lower, middle, and low income consumers are asking for; they don't want to have their unsubsidized homes subject to future limitations that punish them.

Mr. Veve said the bottom line is the evolution of purchasing a home and living in Vermont is built off the village model and we believe this is a very good village model. He said we believe Jericho would be much better served to put incentives in our workforce model here and let the owners make good community future decisions. He said we ask the DRB to consider the following request:

1. The energy efficiency bonus via Efficiency Vermont Standard, or its equivalent.
2. The density be determined on the tier conventional lot method; noting the conventional side density plan aspect, our Engineer printed this out showing the lot subdivided in two, properly meeting all of the Town regulations to have a full 2-lot subdivision if it was done on a conventional basis; that should be attached and say density plan.

Mr. King asked Ms. Patrick which zone this is in. Ms. Patrick stated she believes this is Rural Residential. Mr. King asked about the minimum lot size. Ms. Patrick responded it is 3 acres. Mr. Veve said we are 6.2 +/- acres on this lot. Mr. King clarified there is a plan with the conventional subdivision. Mr. Veve said yes, noting it says Density Plan on the top. He returned to the request, noting the following:

3. Whole lot, minus the exclusive land condo segments at the ½ acre exclusive control be accepted for the PUD and open space considerations.
4. Sketch Plan be approved and we will edit based on DRB feedback for final review; noting the current attachments.

Board Questions

Mr. King asked for clarification about the site plan, what you are showing as far as the driveways and you said something about the keyholes, exclusives and non-exclusives; please clarify the site plan.

Mr. Veve oriented everyone to the plan, saying Oriel Orchard Lane will service the three footprints. He said currently permitted for one as we stand now, with our wastewater permits as well. He stated this road will service as the general road, indicating the location of the driveways. Mr. Veve said speaking to the keyhole aspect, each footprint down to the unit because we are proposing units within the footprints, which is the townhouses, has its own ½ acre, private aspect through the HOA agreement. He said the HOA in essence owns all of the open space other than the keyholes, making that all part of the open space for the PUD plans.

Mr. King said he still does not understand what you are talking about when you say keyholes because there is nothing in our regulations that says anything about keyholes; what are you talking about. Mr. Veve said it is a way to visually explain it. Mr. King asked a different way, what is the legal format you are proposing; where are the subdivision lot lines proposed to be. Mr. Veve stated this is sketch right now, so they haven't proposed those yet; that will be at final. Mr. King said his question stands; you are asking if it would be okay to do "X" and I don't know what "X" is. Mr. Veve said the HOA agreement is saying you have two units here and they each enjoy a ½ acre around the unit. Mr. Flynn clarified there is a limited common area around each unit. Mr. Veve agreed.

Mr. Flynn asked if that limited common area would be deeded to the occupant of say Unit 1. Mr. Veve said he also has a realtor helping us with this and introduced Don Foote. Mr. Foote explained that basically what we are talking about here is that there will not be a subdivision; we are not talking about subdividing out separate lots. He said the whole area, if you think about a condominium development, with a condo you own the inside of the unit and the Homeowners Association owns everything else. He stated this will be set up very similarly. Mr. Foote said what we are talking about for the individuals in each unit is that the HOA will be set up with language such that each individual unit owner will have exclusive use of approximately ½ acre area around their unit. He said it is owned by the HOA, it is not separately subdivided, which is the way the language will read. Mr. Foote and the DRB members discussed the concept further, including what would be included in the deed and the HOA agreement language.

Mr. King discussed what is allowed under the PUD regulations. Mr. Carroll discussed the difference between common area and exclusive exterior space, noting the legal implications. Mr. King said I think I understand what you are proposing, but the question is whether it meets the regulations. He said the regulations may say because the way it is conveyed it does not meet them; if that is the case, then we are in a sticky situation. He said in other words, it is possible that the regulations say something that is not supported in statute. Mr. King said it is your job as the applicant to get the

lawyers, including the Town attorney to understand what is going on and to explain it to us, discussing examples. Mr. Flynn said it is a common interest ownership plan. Mr. King said we will have to look at what the State statute says. He stated I think what you are proposing is not a subdivision; the land would be conveyed from whoever legally owns it to an HOA, the HOA would own the land, it is one lot owned by one HOA, which pays one tax bill. He said if you don't do a subdivision and there is one plat on the tax map, how does it get to be six tax bills; I don't know, but you will have to explain that.

Mr. Carroll stated he thinks the issue in front of the Board is actually a practical application of your interpretation of the 50% open space versus the 50% exclusive space, that is the question for sketch. He said the law part of it I believe is governed by the common interest law at the State level as interpreted by the Town. Mr. King said let's stipulate for a moment that we can get the lawyers to figure out how to write the contract, what I am concerned about here is that you are talking about density bonuses and lots and subdivision rules, which don't apply if you are not doing a subdivision. He said what you are trying to do here is put six units on one lot. Ms. Patrick stated that has been done before in Jericho. Mr. King said I believe you, but it is legally different. He discussed the matter further, including how the regulations are generally applied, including examples. He explained what the applicant will need to establish to meet the density rules, asking whether he is making it clear what the problem is.

Mr. Veve responded I think so, discussing how they were interpreting it. He said as it is written, we are asking for the interpretation of the density bonus under energy efficiency and the conventional aspect to allow for the third lot under a PUD. Ms. Patrick noted the Board could interpret the density bonus via lot coverage instead of approved dwelling units. Mr. King asked if that applies in this zone, saying he thought that was only in the Village Center Zone. Mr. Veve said not as we read them. Ms. Patrick explained the definition of the PUD. Mr. King stated he doesn't think a PUD applies here. Ms. Patrick said that is how she is interpreting it because the density bonus is only available under the PUD, referring to Section 10.13.8. Mr. King said now I understand what you are saying about the PUD, it is the PUD process that allows for density bonuses. Ms. Patrick agreed. Mr. King discussed the matter further.

Mr. Foote asked at what point in the process they could get a determination as to whether the alternative energy efficiency standard could be used. Mr. King said we can research the matter, explaining that there is not a deliberative session on a sketch plan. Mr. Flynn asked whether they were looking at a preliminary and final, or just going right to final. Mr. Foote responded they are just trying to get some direction. Mr. Flynn said with a large amount of grey area here, just final might be tough, suggesting preliminary and final to answer the questions. Mr. Veve and Mr. King discussed the possible ways to proceed.

Mr. King said you have a proposed site plan here that shows the road and the driveways; what I don't understand, with the contours of the land is that it looks like there is a significant slope, noting an example. He asked if they are 1' contours. Mr. Foote agreed they are 1' contours. Mr. Veve said the slopes are not that great and the topography is great. Mr. Foote said the soils here are all sand and gravel, which is great. He said this already has an existing building permit for an 8-bedroom home, which is why it shows a septic that has already been permitted. Ms. Patrick said she thinks it is five, not eight. Mr. Foote stated there has already been some site work done on that, so the topo that you see here, this area has already been dropped down; there is enough slope here that you can do a walk-out basement, which is kind of nice.

Mr. Flynn clarified with the sight distance on that, you said you already have a permit for an entrance road. Mr. Foote agreed, saying the Road Commissioner has already looked at it and signed off on it and the Selectboard approved it. Mr. King clarified the curb cut is at the location shown there, so there is a hammerhead with the driveway off of that. Ms. Patrick asked if the road is approved as the road, saying she knows there is a curb cut already. Mr. Foote clarified the curb cut has been approved for the single home. Ms. Patrick stated I remember that, but I don't remember the road approval. Mr. Foote said what we have done with this concept of having multiple units, you have to have a private road built to a higher standard with four or more units, so that is why it comes to there. He explained the access to each unit. Ms. Patrick stated I asked the Assessor if that was a road and she said no. She clarified that is the plan is for it to be called that eventually. Mr. Foote agreed. Mr. King said in the regulations the difference between a road and a driveway is how many it serves. Mr. Foote agreed, saying that is why it is drawn that way. Mr. King stated you have a private road that then feeds a number of private driveways.

Mr. Flynn said you are butting right up against the high school; we have six units here, depending on who ends up there, will there be any buffer limitations with the high school kids wandering up in there. Mr. Veve responded that there already is some incredible scrub brush that acts as natural security because you cannot walk through it. He described the existing condition of the land between the subject property and the school. He said there is one spot that they will definitely address before final. Mr. Foote discussed the matter further, including screening and signage with the DRB members.

Mr. Flynn asked if there is any long-term plan for a path or sidewalk along Morgan Road. Ms. Patrick responded there is really no pedestrian infrastructure other than a crosswalk across Browns Trace Road, which is mostly there for the students, noting the reasons for the crosswalk. She discussed the plans for the remaining segments of the multi-modal pathway in the area and the long-term plan. Mr. Flynn asked about an easement. Ms. Patrick stated it may be in the Town's best interest to request an easement along that side, saying the Trails Committee would definitely agree with that.

Mr. Swisher said he is a member of the Conservation Commission and one of the concerns or priorities of the Commission has is providing habitat for wildlife and conserving those values that are important to Jericho. He discussed the work that has been done, noting there is a lot to the northeast of the parcel that connects to the high school. He stated he would like to see the footprint of the actual building to be condensed and the open space be a higher priority in terms of providing common space for the people using the trail through there and maintaining some habitat connectivity for wildlife. Mr. Swisher discussed the need to balance the needs of the community and the needs of the wildlife. Mr. Veve responded that he is a conservationist as well, discussing the approach to the design.

Mr. King asked about the slopes and the whether the buildings could be clustered differently to allow open space in the area discussed by Mr. Swisher. Mr. Foote responded we actually have them clustered pretty much as tightly as we can, noting the site constrictions driving the location of the buildings. He also discussed the contours on the property, noting where the animals likely are traveling. Mr. King discussed the matter further with Mr. Foote.

Mr. Carroll said from the Trails Committee's perspective, they have been speaking with Mr. Veve about the possibilities of a pathway out of the travelled lane. He said they are investigating where the easement should go. Mr. King said many of the things we are discussing are aspirational in the Town Plan and if you address them in the site plan, that helps. Mr. Carroll discussed the matter further.

Mr. King said it has been noted the soils are good, but can you tell me what you are likely to do here; what do you think the stormwater plan is. Mr. Veve said based off of the impervious calculations and the slope, there literally is a gully that comes down this topo and runs all the water; it infiltrates and flows back. He referred to the photographs, saying it naturally infiltrates, so there is no as proposed and engineered stormwater plan. Mr. King said there is always a stormwater plan, but the question is whether you need to construct or engineer anything or not. He said they will need to explain what is going to happen and how do you know it. He added the exact grading plan will be important.

Mr. Swisher discussed a way to limit the impervious area. Ms. Patrick said that remains conditional on whether the other lot across the road remains undeveloped or not. Those present also discussed the location of the septic system. Ms. Patrick stated the applicant will need to submit a conceptual plan at the next hearing, whether it is preliminary or final, noting the requirements for that are in the regulations. She clarified at this point the proposed density is six units. Mr. Veve agreed, saying three footprints with six units. Ms. Patrick said it is a requirement to confirm at sketch whether you will be sticking with that.

Mr. Chouinard said he has a couple of questions, concerns. He asked, regarding the northwest corner, whether anyone has evaluated whether there are some wetland issues there. He said I think directly across the road on the Indy property they may have had a wetland designation; I don't know if that continues into the gully. Mr. Chouinard said where that driveway comes in is probably the narrowest stretch of Morgan Road, it is a steep road and in the winter-time that is extremely narrow. He said with an additional six units coming in right there, will there need to be some road improvements or mitigation to improve the road access. He said those are the two issues I have having lived there for many years.

Mr. King asked if we have any information from the Road Foreman from when they looked at and issued the curb cut. Ms. Patrick stated they did issue the curb cut, but that was when they were under the impression that it would be just one house, saying I don't know if it would necessarily have changed. She said he didn't make any comments except that the culvert was to be galvanized. Mr. Veve clarified the culvert he was referring to will end up being on the private road. He said in terms of the slope, the ground drops away from Morgan Road, so there wouldn't be water on the site, but with the private road going across it makes sense to put a culvert underneath. Mr. Flynn asked if there was anything on the ANR (Agency of Natural Resources) site for wetlands or map. Mr. Veve responded no, discussing the various maps they checked. Ms. Patrick said she would follow up with the Road Foreman since the number of units proposed has increased. Those present discussed the road conditions further.

3. Approve minutes from March 10, 2016.

On a motion by Mr. Flynn, seconded by Mr. York, the DRB unanimously approved the minutes from April 14, 2016 as written.

The Development Review Board entered deliberative session at 9:11 p.m.

The Development Review Board adjourned at 10:36 p.m.